

SENATE BILL 283  
By Finney

AN ACT to amend Tennessee Code Annotated, Title 68,  
Chapter 1, relative to tracking prescriptions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 1, is amended by inserting sections 2 through 13 below as a new part thereto.

SECTION 2. As used in this part, unless the context otherwise requires:

- (1) "Department" means the department of health;
- (2) "Controlled substances" means those controlled substances listed in schedules II, III, IV, and V, found at sections 39-17-408, 39-17-410, 39-17-412, and 39-17-414. For purposes of this part only, controlled substances do not include those substances designated as schedule I, VI or VII controlled substances in title 39, chapter 17, part 4.
- (3) "Authorized dispenser" means any health care practitioner or pharmacist that is authorized to dispense or distribute controlled substances in this state and any pharmacy that has obtained a license, permit, or other authorization to operate from the Tennessee board of pharmacy.
- (4) "TennCare" means the bureau of TennCare or the state agency that operates any successor program to TennCare that includes as at least a portion of its participants the population that would be covered under a state-operated Medicaid program.

SECTION 3. The department shall establish an electronic system for monitoring controlled substances that are dispensed within the state by an authorized dispenser. No authorized dispenser shall be required to pay a fee or tax specifically dedicated to the operation of the system.

SECTION 4. Every authorized dispenser shall report to the department the data required by this part in a timely manner as prescribed by the department except that reporting shall not be required for:

- (a) A drug administered directly to a patient; or
- (b) A drug dispensed by a practitioner at a facility licensed by the department provided that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of forty-eight (48) hours.

SECTION 5.

(a) Data for each controlled substance that is dispensed shall include but not be limited to the following:

- (1) Patient identifier;
- (2) Drug dispensed;
- (3) Date of dispensing;
- (4) Quantity dispensed;
- (5) Prescriber; and
- (6) Dispenser.

(b) The data shall be provided in the electronic format specified by the department unless a waiver has been granted by the department to the authorized dispenser. The department shall establish acceptable error tolerance rates for data. Authorized dispensers shall ensure that reports fall within these tolerances or, if the authorized dispenser exceeds the error tolerance rate, shall correct incomplete or inaccurate data when notified by the department to do so.

SECTION 6. The department shall be authorized to provide data to:

- (a) Any board responsible for the licensure, regulation, or discipline of any practitioner or authorized dispenser if the board is already conducting an investigation of

that particular practitioner or authorized dispenser related to improper prescribing or dispensing practices;

(b) Any state, county or local law enforcement officer, a full-time law enforcement officer of another state, or a federal law enforcement officer whose duty is to enforce the laws of this state, of another state, or of the United States relating to drugs, and who is engaged in a specific investigation to which the information to be disclosed is relevant;

(c) TennCare, for the purpose of identifying TennCare recipients whose usage of controlled substances should be appropriately managed or whose usage of controlled substances may be fraudulent;

(d) A properly convened grand jury pursuant to a subpoena properly issued for the records;

(e) A practitioner or pharmacist who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a current patient;

(f) In addition to the purposes authorized under subsection (a) of this section, the Tennessee board of medical examiners, for any physician who is:

(1) Associated in a partnership or other business entity with a physician who is already under investigation by the board of medical examiners for improper prescribing practices;

(2) In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing may be occurring; or

(3) In a designated geographic area for which a report on another physician in that area indicates a substantial likelihood that inappropriate prescribing may be occurring in that area; or

(g) A judge or a probation or parole officer administering a diversion or probation program of a criminal defendant arising out of a violation of this chapter or of a criminal defendant who is documented by the court as a substance abuser who is eligible to participate in a court-ordered drug diversion or probation program.

SECTION 7. A person who receives data or any report of the system from the department shall not provide it to any other person or entity except by order of a court of competent jurisdiction, except that:

(a) A law enforcement officer who is authorized to receive data or a report may share that information with other law enforcement officers authorized to receive data or a report if the law enforcement officers are working on a bona fide specific investigation involving a designated person. Both the person providing and the person receiving the data or report under this paragraph shall document in writing each person to whom the data or report has been given or received and the day, month, and year that the data or report has been given or received. This document shall be maintained in a file by each law enforcement agency engaged in the investigation; and

(b) A representative of TennCare may share data or reports regarding overutilization by TennCare recipients with a licensure or disciplinary board authorized to receive information by this part or with a law enforcement officer authorized to receive information by this part; and

(c) TennCare may submit the data as evidence in an administrative hearing held in accordance with the Uniform Administrative Procedures Act compiled at title 4, chapter 5.

SECTION 8.

(a) The department, all law enforcement officers authorized to receive information pursuant to this part, all officers of the court, and all regulatory agencies and

officers, in using the data for investigative or prosecution purposes, shall consider the nature of the prescriber's and dispenser's practice and the condition for which the patient is being treated.

(b) The data and any report obtained therefrom shall not be a public record, except to the extent that TennCare submits the data as evidence in an administrative hearing as provided in subdivision (h)(3).

#### SECTION 9.

(a) Knowing failure by a dispenser to transmit data to the department as required by this section is a Class A misdemeanor.

(b) Knowing disclosure of transmitted data to a person not authorized by this section, or obtaining information under this section not relating to a bona fide specific investigation, is a Class D felony.

SECTION 10. The department shall submit an application to the United States Department of Justice for a drug diversion grant to fund a pilot project to study a real-time electronic monitoring system for controlled substances. The pilot project shall:

(a) Be conducted in two (2) rural counties that have an interactive real-time electronic information system in place for monitoring patient utilization of health and social services through a federally funded community access program; and

(b) Study the use of an interactive system that includes a relational database with query capability.

Provisions in this part that relate to data collection, disclosure, access, and penalties shall apply to the pilot project.

SECTION 11. The department may limit the length of time that data remain in the electronic system. Any data removed from the system shall be archived and subject to retrieval within a reasonable time after a request from a person authorized to review data under this part.

SECTION 12. The department shall work with the appropriate state agencies and the Tennessee Bar Association to ensure that law enforcement officers, attorneys, and persons who are authorized to prescribe, administer or dispense controlled substances have available to them continuing education programs about the purposes and uses of the electronic monitoring system established in this part.

SECTION 13. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 14. This act shall take effect January 1, 2006, the public welfare requiring it.